

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

LAPORSHA BROWN, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

**Case No.: 4:21-cv-668**

NAFPAKTOS, INC. dba DIAMOND CLUB  
CABARET, *et al*,

*Defendants.*

---

**PLAINTIFF'S REQUEST TO COURT CLERK FOR ENTRY OF DEFAULT  
PURSUANT TO FED. R. CIV. P. 55(a)**

Plaintiff LaPorsha Brown (Plaintiff) files this Request to the Court Clerk for Entry of Default pursuant to Fed. R. Civ. P. 55(a) against Defendant Nafpaktos, Inc. dba Diamond Club Cabaret, (Diamond Club or Defendant) and shows the Court as follows:

**A. FACTUAL BACKGROUND<sup>1</sup>**

***1. The Nature and Filing of the Complaint***

On March 1, 2021, Plaintiff LaPorsha Brown filed this action against Defendants Diamond Club and Yates for damages resulting from Defendants evading the mandatory minimum wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §§201, et. Seq. (FLSA) and illegally absconding with Plaintiff's tips.<sup>2</sup> Diamond Club is located at 3136-38 Richmond Ave., Houston, Texas 77098, and is owned and operated by Defendant Yates.<sup>3</sup> To date, Defendants have not filed responsive pleadings, defended the lawsuit or made any attempt(s) to negotiate or

---

<sup>1</sup> See **Exhibit 1** – Declaration of Leigh S. Montgomery, supporting the facts herein and request for entry of default, incorporated for all purposes.

<sup>2</sup> Plaintiffs' Original Complaint [Dkt 1]

<sup>3</sup> See **Exhibit 2** – Secretary of State filings for Defendant Diamond Club/Yates

communicate with Plaintiffs or Plaintiffs' counsel.<sup>4</sup>

## **2. Service of Summons on Defendants**

After repeated attempts to serve Defendant at its listed location and registered agent, Eric Yates, at 3136 Richmond, Houston, Texas, Plaintiff then attempted service on other alleged addresses she could find for Eric Yates, but to no avail. As a result, on August 25, 2020 a letter and copy of the Original Petition and Summons in the Civil Action were mailed to the Secretary of State of Texas, Service of Process for service on the Defendant Diamond Club. On 9/21/21 the Secretary of State returned the Certificate of Service noting that the process was returned to their office on September 9, 2021, bearing the notation, return to sender unable to forward.<sup>5</sup>

## **B. ARGUMENT & AUTHORITIES**

The court clerk may enter a default against a party who has not filed a responsive pleading or otherwise defended the suit. Fed. R. Civ. P. 55(a); *City of N.Y. v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 129-130 (2d Cir. 2011); see *United States v. \$23,000 in U.S. Currency*, 356 F.3d 157, 163 (1st Cir. 2004). The clerk should enter a default against Defendant Diamond Club because Defendant has not filed a responsive pleading within 21 days after September 21, 2021, the date the proof of service was sent back from the Texas Secretary of State.

Plaintiff has met the procedural requirements for obtaining an entry of default from the clerk as demonstrated by the Declaration of Leigh S. Montgomery, counsel for Plaintiff, and the Exhibits attached thereto.<sup>6</sup>

## **C. CONCLUSION**

For these reasons, Plaintiff requests the clerk enter a default against Defendant Nafpaktos,

---

<sup>4</sup> See **Exhibit 1**.

<sup>5</sup> See **Exhibit 3** – Certificate of Service (Dkt 8)

<sup>6</sup> See **Exhibit 1**

Inc. dba Diamond Club Cabaret.

Dated: January 26, 2022

Respectfully submitted,

**ELLZEY & ASSOCIATES, PLLC**

/s/ Leigh S. Montgomery

Jarrett L. Ellzey

Texas Bar No. 24040864

Leigh Montgomery

Texas Bar No. 24052214

1105 Milford Street

Houston, Texas 77066

Telephone: (713) 554-2377

Facsimile: (888) 276-3455

jarrett@ellzeylaw.com

leigh@ellzeylaw.com

*Attorneys for Plaintiff, Laporsha Brown*

**CERTIFICATE OF SERVICE**

I certify that on January 26, 2022, a copy of the foregoing document was filed in accordance with the protocols for e-filing in the United States District Court for the Southern District of Texas and served via authorized mail service on the Defendants as follows:

Nafpaktos, Inc. dba Diamond Club  
Eric Christopher Yates  
3136-38 Richmond Ave  
Houston, Texas 77098

/s/ Leigh S. Montgomery

Leigh S. Montgomery